

Application Serial No. 10/657,583
Reply to Office Action dated December 21, 2006

**EXPEDITED HANDLING PROCEDURE
PURSUANT TO 37 C.F.R. § 1.116**

REMARKS/ARGUMENTS

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Initially, the Applicant would like to thank the Examiner for taking the time to discuss the outstanding Office Action with the Applicant's representative during a telephone interview conducted on January 24, 2007. Initially, the Applicant's representative clarified a misunderstanding that arose following the response to the previous Office Action. Specifically, in the response to the previous Office Action, the Applicant's representative indicated that agreements were reached in that amending claims 5, 11 and 15 to include means-plus-function limitations would patentably define the invention over the prior art of record. The Examiner indicated in the present Office Action that this was not the case. During the interview, it was clarified that the agreements reached were that amending claims 5, 11 and 15 to include means-plus-function limitations would patentably define the invention over the prior art of record if the claims were properly interpreted under § 112, sixth paragraph. In the present Office Action, the Examiner did interpret claim 5 under § 112, sixth paragraph and, subsequently, allowed that claim. Claims 11 and 15 were not interpreted under § 112, sixth paragraph and thus remain rejected. The interview also focused on the interpretation of the means-plus-function limitations presented in claims 11 and 15, the differences between the present invention as defined in claim 1 and the prior art reference to Budde et al., as well as minor changes to claims 13 and 14, as discussed further below.

On page 3 of the present Office Action, the Examiner rejected claims 11-13 under 35 U.S.C. § 102(b) as being anticipated by VanderMeer et al. (U.S. Patent No. 5,271,709). In his rejection, the Examiner indicated that the means for transporting taco shells presented in claim 11 was not considered under 35 U.S.C. § 112, sixth paragraph. The Examiner was of the position that the recitation in the claims directed to first and second operational speeds of the transporting means imparted sufficient structure to the

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claim so as to remove consideration under § 112, sixth paragraph. During the interview, the Applicant agreed to amend claim 11 to remove the language pertaining to the first and second operational speeds and simply indicate that the means for transporting taco shells can operate at multiple, varying operational speeds.

A similar rejection was presented to claim 15 as being anticipated by Gallagher (U.S. Patent No. 6,018,933). The Examiner indicated that the means for holding a nested group of taco shells had not been considered under 35 U.S.C. § 112, sixth paragraph. The Examiner felt that the claim included sufficient structure so as to perform the means and thereby removed the claim from interpretation under 35 U.S.C. § 112, sixth paragraph. During the interview, the Applicant agreed to further define in the response the means for holding a nested group of taco shells, and to clarify that the opposed vertical surfaces and the structure located above the holding means were actually separate components. Toward that end, the means for holding a nested group of taco shells should not be construed to include the structure necessary to align and limit a vertical travel of the nested group of taco shells as aligning occurs. The Examiner agreed that under this interpretation, the means for holding a nested group of taco shells should be considered under 35 U.S.C. § 112, sixth paragraph. The Examiner further agreed that, if considered under 35 U.S.C. § 112, sixth paragraph, claims 11 and 15 would be patentably distinct over the prior art of record given that none of the prior art of record is concerned with transporting or holding taco shells as claimed.

With respect to claim 1, the Examiner and the Applicant's representative discussed the interpretation of the Budde et al. reference. During the discussion, the Examiner indicated that the structure in Budde et al. analogous to the first pivot shaft is a pin located on a terminal end portion of part 78 which connects to a cross-hatched member. The Applicant submits that there is no discussion or depiction in Budde et al. that the pin is actually rotatably connected to the cross-hatched member. Moreover, the

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Applicant submits that the pin would likely be fixed relative to the cross-hatched member thereby allowing part 78 to freely rotate about the axis of the pin. In addition, the Applicant submits that the folder finger 74 in Budde et al. does not extend substantially perpendicularly from the first pivot shaft, identified by the Examiner as the circle shown at the terminal end portion of part 78 that connects to the cross-hatched member. However, regardless of these clear distinctions, in order to further prosecution, the Applicant amended claim 1 to more particularly point out and distinctly claim that the first and second pivot shafts define corresponding first and second rotational axes, with the first and second folder fingers being rotatable about corresponding ones of the first and second axes. The Applicant respectively submits that claim 1, as previously presented, was patentably defined over the prior art of record, and the amendments to claim 1 further distinguish the present invention from the prior art. Thus, claim 1 should now be in clear condition for allowance.

Finally, with regards to § 112, second paragraph issues, claim 10 recites a cam supported off a first pillow block with the cam being adapted to open a pair of folder lever arms. The Applicant submits that the folder lever arms do not form part of the means for retaining a nested group of taco shells but are actually part of an insert magazine. With this in mind, the Applicant submits that claim 10 properly further limits claim 5 and thus, should not be rejected as being indefinite. Claims 13 and 14 have been amended to correct minor points arising from a previous amendment to claim 11. The Applicant submits that claims 10, 13 and 14 are now in condition for allowance.

Based on the above remarks, amendments to the claims and agreements reached with the Examiner regarding the changes to be made and the entry of this amendment/response, the Applicant respectfully submits that the present invention is patentably defined over the prior art of record such that allowance of all claims and passage of the application to issue is respectfully requested. If the Examiner has any

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questions or concerns regarding this matter he is cordially invited to contact the undersigned at the number provided below in order to further prosecution.

Respectfully submitted,


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